

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION**

TODD DANIELS,

Petitioner,

Case Number: 04-CV-71418-DT

v.

HONORABLE DENISE PAGE HOOD

BLAINE LAFLER,

Respondent.

/

**AMENDED ORDER GRANTING PETITIONER'S MOTION TO DISMISS  
SECOND APPEAL AND REFUND FILING FEE**

Petitioner Todd Daniels, through counsel, filed a petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254. On May 26, 2005, the Court issued an Opinion and Order Denying Petition for Writ of Habeas Corpus. Petitioner filed a Notice of Appeal and Motion to Issue Certificate of Appealability in this Court on June 21, 2005, and paid the associated \$255.00 filing fee. On August 8, 2005, the United States Court of Appeals for the Sixth Circuit entered an order dismissing the appeal on the ground that “(n)o final or appealable order terminating all the issues presented in the litigation has been entered.” See Daniels v. Lafler, No. 05-1846 (6<sup>th</sup> Cir. Aug. 8, 2005). The Court’s docket sheet was corrected on July 18, 2005, to reflect the Court’s May 26, 2005 opinion and judgment.

Petitioner filed another Notice of Appeal and Motion to Issue Certificate of Appealability in this Court on August 15, 2005, in an attempt to preserve Petitioner’s right to appeal. Petitioner, through counsel, once again paid the \$255.00 appellate filing fee. On

August 26, 2005, the Sixth Circuit Court of Appeals issued an Order withdrawing the August 8, 2005 order dismissing the appeal and reinstated the appeal to the court's active docket. See Daniels v. Lafler, No. 05-1846 (6<sup>th</sup> Cir. Aug. 26, 2005). Petitioner's counsel now asks the Court to dismiss the appeal filed August 15, 2005 and direct that the \$255.00 filing fee paid in connection with that appeal be refunded to him. The Clerk's records indicate the filing fee was paid by Petitioner's counsel. The Court finds that, in the interest of justice, the duplicative Notice of Appeal should be dismissed and the \$255.00 filing fee paid in connection with the second notice of appeal should be refunded to Petitioner's counsel.

Accordingly, **IT IS ORDERED** that Petitioner's Motion to Dismiss Second Appeal and Refund Filing Fee is **GRANTED**. The Clerk of Court is directed to refund the \$255.00 filing fee paid in connection with the notice of appeal filed on August 15, 2005, receipt # 530124, to Petitioner's counsel, James S. Lawrence.

/s/ Denise Page Hood  
DENISE PAGE HOOD  
UNITED STATES DISTRICT JUDGE

Dated: April 27, 2006

I hereby certify that a copy of the foregoing document was served upon counsel of record on April 27, 2006, by electronic and/or ordinary mail.

s/William F. Lewis  
Case Manager